

Assembly Bill No. 2771

Passed the Assembly August 21, 2006

Chief Clerk of the Assembly

Passed the Senate August 17, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 84602 and 84605 of the Government Code, relating to the Political Reform Act of 1974.

LEGISLATIVE COUNSEL'S DIGEST

AB 2771, Leno. Political Reform Act of 1974: electronic filing.

The Political Reform Act of 1974 requires the Secretary of State, in consultation with the Fair Political Practices Commission, to make available a means or method no later than December 31, 2002, allowing filers subject to the online or electronic filing provisions of the act to submit required filings free of charge. The act specifies that any means or method developed for free online or electronic filing shall not provide any additional or enhanced functions or services that exceed the minimum requirements necessary to fulfill the disclosure provisions of the act.

The act requires that specified persons or entities periodically file reports online or electronically with the Secretary of State, including any general purpose committee that cumulatively has received contributions or made expenditures totaling \$50,000 or more, and any slate mailer organization with cumulative reportable payments received or made for purposes of producing slate mailers of \$50,000 or more.

This bill would make findings and declarations of the Legislature concerning the effect of the failure of the Secretary of State to provide free online or electronic filing for those entities required to file online or electronically by the act, especially smaller entities. The bill would delete the limitation on the provision of additional or enhanced functions or services by the Secretary of State in the means or method for free online or electronic filing. The bill would also delay the online or electronic filing above requirements for certain general purpose committees and slate mailer organizations, with cumulative reportable payments less than \$50,000 over 3 years and not exceeding \$20,000 each year since the formation of the committee or organization, until January 1, 2010, or until the first

filing due more than 6 months after the Fair Political Practices Commission has certified that the free online filing processes developed by the Secretary of State are sufficiently simple to access and use that a person without technical training or support can reasonably be expected to file without that training or support, whichever is earlier.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes with a $\frac{2}{3}$ vote of each house and compliance with specified procedural requirements.

This bill, which would declare that it furthers the purposes of the act, would therefore require a $\frac{2}{3}$ vote.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Contrary to its statutory duty, the Secretary of State has not timely provided a means of free online or electronic filing that can be used by an entity required to disclose information by the Political Reform Act of 1974 to file that information online or electronically without technical training or support.

(b) The Secretary of State must provide a free means of filing online or electronically with appropriately enhanced functions and services to make free filing a viable option.

(c) The cost of contracting with one of the services that can assist a committee or organization to comply with online or electronic filing obligations is prohibitive for some of the smaller organizations that are required to file under the act.

(d) The Legislature did not intend to force those smaller committees and organizations, which by virtue of their limited size are less likely to distort democratic processes, to commit large portions of their budgets to filing obligations or to drive them out of operation by making them inefficient.

(e) Until the Secretary of State provides for free filing methods that are accessible to smaller general purpose committees and slate mailer organizations, as was foreseen at the time the Legislature designed the online filing requirement, or until cost competition in the offering of online filing services by private companies has reduced the cost of compliance, it is inappropriate

to apply the online filing duty to smaller slate mailer organizations and general purpose committees.

(f) Delaying until January 1, 2010, the electronic or online filing obligations of general purpose committees and slate mailer organizations with lesser cumulative revenues will enable the marketplace to adjust and provide less expensive filing services consistent with the lesser budgets of those committees and organizations, in the event the Secretary of State continues to fail to provide an appropriate free method of filing online or electronically.

SEC. 2. Section 84602 of the Government Code is amended to read:

84602. To implement the Legislature's intent, the Secretary of State, in consultation with the commission, notwithstanding any other provision of the Government Code, shall do all of the following:

(a) Develop online and electronic filing processes for use by persons and entities specified in Sections 84604 and 84605 that are required to file statements and reports with the Secretary of State's office pursuant to Chapter 4 (commencing with Section 84100) and Chapter 6 (commencing with Section 86100). Those processes shall each enable a user to comply with all the disclosure requirements of this title and shall include, at a minimum, the following:

(1) A means or method whereby filers subject to this chapter may submit required filings free of charge. Any means or method developed pursuant to this subdivision shall not provide any additional services that exceed the minimum requirements necessary to fulfill the disclosure provisions of this title. At least one means or method shall be made available no later than December 31, 2002.

(2) The definition of a nonproprietary standardized record format or formats using industry standards for the transmission of the data that is required of those persons and entities specified in subdivision (a) of Section 84604 and Section 84605 and that conforms with the disclosure requirements of this title. The Secretary of State shall hold public hearings prior to development of the record format or formats as a means to ensure that affected entities have an opportunity to provide input into the development process. The format or formats shall be made public

no later than July 1, 1999, to ensure sufficient time to comply with the requirements of this chapter.

(b) Accept test files from software vendors and others wishing to file reports electronically, for the purpose of determining whether the file format is in compliance with the standardized record format developed pursuant to subdivision (a) and is compatible with the Secretary of State's system for receiving the data. A list of the software and service providers who have submitted acceptable test files shall be published by the Secretary of State and made available to the public. Acceptably formatted files shall be submitted by a filer in order to meet the requirements of this chapter.

(c) Develop a system that provides for the online or electronic transfer of the data specified in this section utilizing telecommunications technology that assures the integrity of the data transmitted and that creates safeguards against efforts to tamper with or subvert the data.

(d) Make all the data filed available on the Internet in an easily understood format that provides the greatest public access. The data shall be made available free of charge and as soon as possible after receipt. All late contribution and late independent expenditure reports, as defined by Sections 84203 and 84204, respectively, shall be made available on the Internet within 24 hours of receipt. The data made available on the Internet shall not contain the street name and building number of the persons or entity representatives listed on the electronically filed forms or any bank account number required to be disclosed pursuant to this title.

(e) Develop a procedure for filers to comply with the requirement that they sign under penalty of perjury pursuant to Section 81004.

(f) Maintain all filed data online for 10 years after the date it is filed, and then archive the information in a secure format.

(g) Provide assistance to those seeking public access to the information.

(h) Implement sufficient technology to seek to prevent unauthorized alteration or manipulation of the data.

(i) Provide the commission with necessary information to enable it to assist agencies, public officials, and others, with the compliance with and administration of this title.

(j) Report to the Legislature on the implementation and development of the online and electronic filing and disclosure requirements of this chapter. The report shall include an examination of system security, private security issues, software availability, compliance costs to filers, use of the filing system and software provided by the Secretary of State, and other issues relating to this chapter, and shall recommend appropriate changes if necessary. In preparing the report, the commission may present to the Secretary of State and the Legislature its comments regarding this chapter as it relates to the duties of the commission and suggest appropriate changes if necessary. There shall be one report due before the system is operational as set forth in Section 84603, one report due no later than June 1, 2002, and one report due no later than January 31, 2003.

(k) Review the current filing and disclosure requirements of this chapter and report to the Legislature, no later than June 1, 2005, recommendations on revising these requirements so as to promote greater reliance on electronic and online submissions.

SEC. 3. Section 84605 of the Government Code is amended to read:

84605. Beginning on July 1, 2000, and for all applicable reporting periods thereafter, the following persons shall file online or electronically with the Secretary of State:

(a) Any candidate, including appellate court and Supreme Court candidates and officeholders, committee, or other persons who are required, pursuant to Chapter 4 (commencing with Section 84100), to file statements, reports, or other documents in connection with a state elective office or state measure, provided that the total cumulative reportable amount of contributions received, expenditures made, loans made, or loans received is fifty thousand dollars (\$50,000) or more. In determining the cumulative reportable amount, all controlled committees, as defined by Section 82016, and officeholder accounts, as defined by Section 85313, shall be included. For a committee subject to this title prior to January 1, 2000, the beginning date for calculating cumulative totals is January 1, 2000. For a committee that is first subject to this title on or after January 1, 2000, the beginning date for calculating cumulative totals is the date the committee is first subject to this title. A committee, as defined in subdivision (c) of Section 82013, shall file online or

electronically if it makes contributions of fifty thousand dollars (\$50,000) or more in a calendar year.

(b) Any general purpose committees, as defined in Section 82027.5, including the general purpose committees of political parties, and small contributor committees, as defined in Section 85203, that cumulatively receive contributions or make expenditures totaling fifty thousand dollars (\$50,000) or more to support or oppose candidates for any elective state office or state measure. For a committee subject to this title prior to January 1, 2000, the beginning date for calculating cumulative totals is January 1, 2000. For a committee that first is subject to this title on or after January 1, 2000, the beginning date for calculating cumulative totals is the date the committee is first subject to this title. However, any entity that would otherwise be required by this subdivision to file online or electronically that has not cumulatively received contributions or made expenditures totaling fifty thousand dollars (\$50,000) within three years of the applicable beginning date for calculating cumulative totals and does not exceed twenty thousand dollars (\$20,000) each year since the formation of the committee need not file online or electronically until January 1, 2010, or until the first filing due more than six months after the commission has certified that the free online filing processes developed by the Secretary of State pursuant to Section 84602 are sufficiently simple to access and use that a person without technical training or support can reasonably be expected to file without that training or support, whichever is earlier.

(c) Any slate mailer organization with cumulative reportable payments received or made for the purposes of producing slate mailers of fifty thousand dollars (\$50,000) or more. For a slate mailer organization subject to this title prior to January 1, 2000, the beginning date for calculating cumulative totals is January 1, 2000. For a slate mailer organization that first is subject to this title on or after January 1, 2000, the beginning date for calculating cumulative totals is the date the organization is first subject to this title. However, any entity that would otherwise be required by this subdivision to file online or electronically that has not cumulatively received or made reportable payments totaling fifty thousand dollars (\$50,000) within three years of the applicable beginning date for calculating cumulative totals and

does not exceed twenty thousand dollars (\$20,000) each year since the formation of the slate mailer organization need not file online or electronically until January 1, 2010, or until the first filing due more than six months after the commission has certified that the free online filing processes developed by the Secretary of State pursuant to Section 84602 are sufficiently simple to access and use that a person without technical training or support can reasonably be expected to file without that training or support, whichever is earlier.

(d) Any lobbyist, lobbying firm, lobbyist employer or other persons required, pursuant to Chapter 6 (commencing with Section 86100), to file statements, reports, or other documents, provided that the total amount of any category of reportable payments, expenses, contributions, gifts, or other items is five thousand dollars (\$5,000) or more in a calendar quarter.

(e) The Secretary of State shall also disclose on the Internet any late contribution or late independent expenditure report, as defined by Sections 84203 and 84204, respectively, not covered by subdivision (a), (b), or (c).

(f) Committees and other persons that are not required to file online or electronically by this section may do so voluntarily.

(g) Once a person or entity is required to file online or electronically, subject to subdivision (a), (b), (c), (d), or (f), the person or entity shall be required to file all subsequent reports online or electronically.

(h) It shall be presumed that online or electronic filers file under penalty of perjury.

(i) Persons filing online or electronically shall also continue to file required disclosure statements and reports in paper format. The paper copy shall continue to be the official filing for audit and other legal purposes until the Secretary of State, pursuant to Section 84606, determines the system is operating securely and effectively.

(j) The Secretary of State shall maintain at all times a secured, official version of all original online and electronically filed statements and reports required by this chapter. Upon determination by the Secretary of State, pursuant to Section 84606, that the system is operating securely and effectively, this online or electronic version shall be the official version for audit and other legal purposes.

SEC. 4. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

Approved _____, 2006

Governor